IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 8TH JUNE 2007 / 18TH JYAISHTA 1929

**WP(C).No. 17669 of 2007(C)**

{O.S.NO.175/1998 OF THE PRINCIPAL SUB COURT, KOTTAYAM}

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**PETITIONER:**

1. SHOBY SEBASTIAN, S/O. LATE SEBASTIAN, PADAMADATHU HOUSE, MATHILAKAM KARA, MATHILAKAM VILLAGE, KODUNGALLUR TALUK.

2. SHAJI SEBASTIAN, -DO- -DO-

BY ADV. SRI.T.N.MANOJ

**RESPONDENTS:**

1. SREEKUMAR, S/O. KRISHNAN THAMPI, INDRAPRASTA, MARIAPILLY KARA, NATTAKOM VILLAGE, KOTTAYAM TALUK.

2. SHELDON SEBASTIAN, S/O. LATE SEBASTIAN, PADAMADATHU HOUSE, MATHILAKOM KARA, MATHILAKOM VILLAGE, THRISSUR DISTRICT.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 08/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

# M.N.KRISHNAN, J.

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## W.P.(C) No.17669 of 2007 C

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**Dated this the 8th day of June, 2007.**

## JUDGMENT

This writ petition is filed seeking a direction to the Principal Sub Judge, Kottayam, to pass appropriate orders on I.A.No.1317/07 in O.S.No.175/98, which is pending on his file, without waiting for receipt of the prior records, since the records are found to be destroyed.

2. It is the case of the writ petitioners that the suit was instituted against the present writ petitioners by one K.Sreekumar as O.S.No.175/98 and there was an interim order of attachment before judgment in the said case and the said case, as per Ext.P1 dated 20.8.1999, was dismissed as not pressed. Ext.P2 is the decree, which would also evidence the same. Learned counsel for the petitioners would submit that when an application for lifting the attachment was

filed, notice was given to the counsel for the plaintiff and he has already reported '*no objection*' in issuing such an order. He had endorsed that he has no objection. When the parties to the suit have compromised the matter and as the suit has not been pressed, it was the duty of the court, on that day itself, to communicate the order to the concerned Sub Registrar regarding the lifting of attachment. If court has not done it, it was a mistake and, at least, when it is pointed on a later stage, the court should see that immediate communication is given to the concerned sub Registrar about the lifting of attachment. If the records are destroyed, the suit register will be very well available in the court and the court can verify it and dispose of the application. Therefore, on the next posting itself, the court can adopt one of the methods either by perusing the records or the '*no objection*' given by the plaintiff

and pass appropriate orders. When it is satisfied, then it shall communicate to the Sub Registrar to lift the attachment.

With the above observation, the writ petition is disposed of as above.

Sd/-
**(M.N.KRISHNAN)**
**JUDGE**

sk/

**//true copy//**

P.S. To Judge